IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8978 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JUGATBHAI R RAVAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8978 of 1992

MR MD RANA for Petitioner No. 1

MR BY MANKAD, AGP for Respondent No. 1 & 3.

MR KG PANDIT for Respondent No.2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 12/02/2002

ORAL JUDGEMENT

1. Jugatbhai R.Raval, petitioner has filed this petition with a prayer that this Court may issue a writ of mandamus directing the State of Gujarat through

Development Commissioner - respondent No.1, the Chairman Supedi Gram Panchayat - respondent No.2 and the Director of Pension and Provident Fund, Ahmedabad - respondent No.3 to make the pay fixation in the pay scale existed under the Second Pay Commission more particularly the pay scale of Rs.260-400 and consequent arrears from the date of the implementation of the Second Pay Commission. He further prayed that this Court may also issue a writ of mandamus directing the respondents to make the pay fixation in the pay scale of Rs.950-1500 together with arrears and to hold that the petitioner is entitled to the aforesaid two scales together with arrears. He further prayed that the respondents be directed that the petitioner is entitled to the various retiral benefits and further direct the respondents to make the fixation of his pension and gratuity on the basis of the pay fixation with full retiral benefits.

2. The facts giving rise to this petition are as under:-

2.1 It is a case of the petitioner that Supedi Gram Panchayat has appointed the petitioner on 8.8.1961 as an ad-hoc temporary clerk. Ultimately he has retired as an ad-hoc employee on 30th July, 1992. Both the orders of the appointment and order of his retirement and terminating the service at the age of 61 years are annexed to this petition.

2.2 Mr.M.D.Rana, learned advocate for the petitioner has stated that the petitioner has been appointed in the year 1961 before the Gujarat Panchayats Act, 1961 came into force. He submitted that the Panchayat Act came into force in August 1963 and by virtue of Section 325 of the Panchayat Act which is repealed by Bombay Village Panchayats Act 1958 he became the employee of the panchayat in this behalf.

2.3 It may be noted that though petitioner has prayed for various reliefs he has not made any grievance before the Panchayat or before the Government in this behalf.

3. On behalf of Supedi Gram Panchayat, Mr.K.G.Pandit, learned advocate appeared. He has relied upon the affidavit of one Zalawadia Nanalal Hirjibhai, Chairman of Supedi Gram Panchayat in this behalf. In the said affidavit it was stated that petitioner was appointed as temporary clerk for three months period till the regularly appointed clerk took over him. The petitioner has continued with fixed salary on temporary basis and had not made any representation or demand about

the alleged claim made in the petition. He continued to work under the same conditions and has drawn emoluments till his services were terminated by Resolution Annexure `C' to the petition. He was not even employee appointed on cadre and post contemplated under Section 203 of the said Act.

3.1 It was further stated that the petitioner had two sons and those two sons were also employed and petitioner requested the panchayat that his services may not be made regular but he requested the Panchayat that his two sons service may be made regularised and he has no quarell about his termination in service.

4. On behalf of the Development Commissioner it was stated that the petitioner has not been in the regular panchayat service in view of Section 203 read with Section 205 of the Panchayats Act and, therefore, he is not regular employee and, therefore, he is not entitled to any benefits contended by the petitioner. He has also invited my attention to the Bombay Civil Services Rules also in this behalf.

5. The petitioner has also filed two rejoinder denying the said contention in this behalf.

6. I have also considered the provisions of the Gujarat Panchayats Act, Gujarat Panchayat Services Selection Board (Functions) Rules, 1964, Gujarat District Panchayat Service Selection Committee (Functions) Rules, 1964 and also the Gujarat Panchayat Service (Pension) Rules, 1976.

7. I have considered the matter in detail, but in absence of any demand or representation made by petitioner earlier, it is very difficult for this Court to give direction to panchayat that he should be given the benefits of Second Pay Commission and Third Pay Commission. As regards Panchayat Pension Rules, I have also gone through the said Rules. However, those rules depend upon various contigencies, and in absence of detail given by petitioner, it is very difficult for this Court to give benefits to the petitioner in this behalf.

8. In view of the same, I direct the Panchayat respondent No.2 that the panchayat will consider the case of petitioner as it is filed in the petition. It will be open for the petitioner to make additional representation to the Panchayat for ventilating the said grievance. If the petitioner desires to make additional grievance he can do so by 22nd March, 2002, and the Panchayat will

decide the said representation by 30th April, 2002, in accordance with the provisions of the Panchayat Act, Rules particularly BCSR Rules in this behalf.

9. In view of the aforesaid observations and directions, the petition is disposed of accordingly. Rule is discharged. No order as to costs.

(K.M. Mehta, J.)

syed/